

RECEIVED

2006 AUG 11 AM 10:49

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE  
OF THE STATE OF IDAHO

STATE OF IDAHO, Department of  
Finance, Securities Bureau,  
Complainant,

vs.

RANDALL MARTIN WADE and FIRST  
WALL STREET CORPORATION,  
Respondents.

Docket No. 2006-7-22

AGREEMENT AND ORDER

The Director of the Department of Finance has instituted an investigation into the conduct of Randall Martin Wade ("Wade") and First Wall Street Corporation ("FWSC"). The Director and the Respondents have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered, and the Respondents consent to the entry of this Agreement and Order.

**RESPONDENTS**

1. Respondent Wade has been registered as a securities salesperson with the State of Idaho and the NASD since September 1987. Wade was an Idaho registered investment adviser agent from July 2002 through December 2005. Respondent Wade has been employed by First Wall Street since September 1998 and his employment address is 1269 Vista Del Monte, Mesquite, Nevada.

2. Responded FWSC has been an Idaho approved registered broker-dealer since June 1991 and an Idaho approved investment adviser since September 2002. FWSC withdrew its Idaho investment adviser registration in February 2006.

### **BACKGROUND**

3. On September 9, 1998, Respondent Wade opened a joint account at First Wall Street for AF and her daughter JA.
4. On September 10, 1998, Respondent Wade opened a SEP IRA account for JA.
5. Both accounts were opened as investment advisory wrap accounts and both accounts were traded with discretion.
6. AF was an eighty-four year old widow when she transferred approximately \$54,000 in cash and securities into her investment advisory account at First Wall Street.
7. AF's new account form indicates she had four years of investment experience, estimated income of \$40,000 and a net worth of \$175,000.
8. Respondent Wade identified on AF's new account form, two investment objectives:  
a) conservative investment objective with income listed as the first priority followed by safety then growth and b) aggressive investment objectives with income ranked as the most important objective followed by trading.
9. The only form signed by AF acknowledging her investment objective is a FWSC Customer Account Agreement dated September 8, 1998. AF marked only one investment objective on this form and the objective was identified as conservative income.

## VIOLATIONS

10. Unlawful Acts of Investment Adviser Idaho Code Section 30-1405. (1) Except as may be permitted by rule or order of the director, it is unlawful for any investment adviser to enter into, extend or renew any investment advisory contract unless it provides in writing:
  - a) That the investment adviser shall not be compensated on the basis of a share of capital gains or capital appreciation of the funds or any portion of the funds of the client;
  - b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
  - c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
11. Respondent FWSC violated IC §30-1405 in that it entered into an investment advisory relationship with AF and JA without providing them with a written investment advisory contract.
12. IDAPA 12.01.08.119.04 (Rule 119.4) pursuant to the Idaho Securities Act ("Act") states that every investment adviser shall establish, maintain and enforce written procedures.
13. Respondent FWSC's written compliance procedures state that First Wall Street shall prepare and keep current the following books and records relating to its activities:

- a) a copy of all powers of attorney and other evidences of the granting of any discretionary or other authority by any client to First Wall Street Corp. and
  - b) contracts for advisory services provided to clients must be in writing and a copy of the contract must be given to the client within 20 days after execution of the contract.
14. Respondent FWSC failed to enforce its written procedures in violation of Rule 119.04 as follows:
- a) Failing to obtain powers of attorney or other documents evidencing Respondent Wade's discretionary authority in AF and JA's investment advisory accounts; and
  - b) Failing to obtain investment advisory contracts for AF and JA's investment advisory accounts.
15. IDAPA 12.01.08.117.02 (Rule 117.02) pursuant to the Idaho Securities Act ("Act") includes as a deceptive or manipulative act or practice, short-term trading in mutual fund shares that have a sales or redemption charge without consideration of the investors best interest.
16. Respondent Wade violated Rule 117.02 by purchasing for AF, on a discretionary basis, at least three mutual funds having either a front-end load or a deferred sales charge and redeeming those shares for cash in less than one year. On each occasion, Respondent Wade received a commission on the purchase of the fund in addition to the annual 2.35% investment advisory fee. Further, Respondent Wade sold shares of Federated Class A Equity Income Fund and in the same month purchased a like

amount in Federated Class B High Income Bond fund. Instead of moving the funds into a comparable Federated Class A Income Bond Fund with no charge to AF, Respondent Wade switched the investment from an A fund to a B fund and made a net commission of \$312 on the transaction.

17. IDAPA 12.01.08.118 (Rule 118) pursuant to the Idaho Securities Act (“Act”) addresses “Unsuitable Recommendations”, as follows:

It shall constitute a “Deceptive or Manipulative Act or Practice”, as used in these rules, for any investment adviser to recommend to a customer the purchase, sale or exchange of any security , unless such investment adviser shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other information known by such investment adviser.

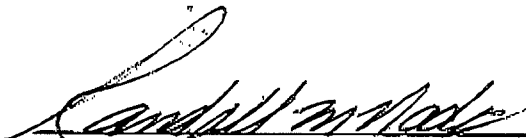
18. Respondent Wade violated Rule 118 in the following way:

AF’s conservative investment objectives coupled with her advanced age, limited investment experience, and relatively low net worth made Respondent Wade’s discretionary purchases in risky technology growth securities such as Onyx Software, JDS Uniphase, BEA Systems and Siebel Systems unsuitable for AF.


### REMEDIES


19. Respondents acknowledge the allegations contained in this Agreement and Order.
20. Respondents represent that the information provided to Complainant in its investigation of this matter is accurate and complete.
21. Respondents agree to pay restitution of \$26,469 to investors AF and JA, account number 3383-7355 and restitution of \$23,752 to investor JA, account number 1038-5800. Respondents agree to pay restitution within thirty (30) days of the date of this Order and to provide the Complainant with proof of such payment.
22. Respondents agree to pay to the Department investigative costs of \$2,000 within thirty (30) days of the date of this Order.
23. Respondents agree to comply with all provisions of the Idaho Securities Act in the future. In the event the Respondents commit violations of the Idaho Securities Act within one (1) year of the date of the Order, Respondents acknowledge that Complainant can incorporate the allegations giving rise to this Order in any future proceeding.
24. If the Respondents fail to timely meet all terms and conditions set forth in this agreement, this agreement shall be null and void, and the Department may seek all remedies allowed by law that arise from the violations referenced in paragraphs 10 through 18 above.

DONE AND DATED at Boise, Idaho this \_\_\_\_\_ day of June 2006.

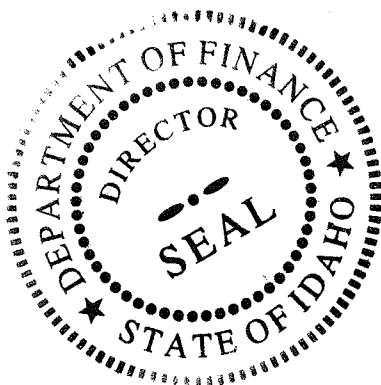
  
RANDALL WADE

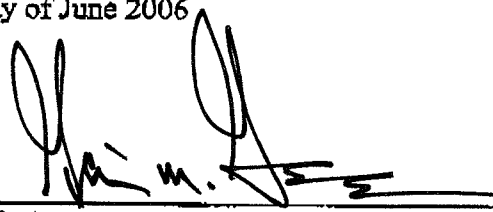
FIRST WALL STREET CORPORATION

BY:   
Charles P. Lazzaro  
TITLE: President

  
MARILYN T. CHASTAIN  
Bureau Chief, Securities Bureau  
Department of Finance  
State of Idaho

IT IS SO ORDERED This 16<sup>th</sup> day of June 2006



  
GAVIN M. GEE  
Director  
Department of Finance